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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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NIPPONKOA INSURANCE COMPANY :
LIMITED, :

Plaintiff,

- against -

NORFOLK SOUTHERN RAILWAY COMPANY :
and THE KANSAS CITY SOUTHERN :
RAILWAY COMPANY, :

Defendants. :

07 Civ. 10498 (DC)

**DECLARATION OF
THOMAS M. EAGAN IN
SUPPORT OF PLAINTIFF'S
MOTION FOR
SUMMARY JUDGMENT**

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I, Thomas M. Eagan, declare that I am a member of Maloof Browne & Eagan LLC, attorneys for plaintiffs NipponKoa Insurance Company Limited.

1. Attached as Exhibit 1 is a true copy of a Stipulation dated October 7, 2009.
2. Attached as Exhibit 2 is a true copy of a subrogation receipt from the OOZX Corporation to NipponKoa (previously authenticated by Mr. Imai of OOZX Corporation, Docket Entry ("D.E.") 23-8).
3. Attached as Exhibit 3 is a true copy of excerpts from defendants' Memorandum of Law in support of its March 31, 2009 motion for summary judgment (D.E. 19).
4. Attached, as Exhibit 4 is a true copy of excerpts from Defendants' Response to Plaintiff's Notice to Admit in related case *Sompo v. Norfolk Southern*, 07 Civ. 2735.
5. Attached as Exhibit 5 is a true copy of the Nippon Express Waybill

YOLS4273480 dated March 31, 2006 regarding the Enplas Shipment (previously authenticated by Defendants, Gambone Declaration, D.E. 20-1).

6. Attached as Exhibit 6 is a true copy of Yang Ming's Bill of Lading YMLW261105283 dated March 30, 2006 regarding Enplas Shipment (previously authenticated by Defendants, Gambone Declaration, D.E. 20-2).

7. Attached as Exhibit 7 is a true copy of Norfolk Southern Waybill regarding the Enplas Shipment (previously authenticated by Defendants, Gambone Declaration, D.E. 20-3).

8. Attached as Exhibit 8 is a true copy of Nippon Express Bill of Lading TYUS2300437 dated March 29, 2006 regarding the OOOX shipment (previously authenticated by Defendants, Gambone Declaration, D.E. 20-6)

9. Attached as Exhibit 9 is a true copy of Yang Ming Waybill YMLUW26115320 dated March 29, 2006 regarding the OOOX shipment (previously authenticated by defendants, Gambone Declaration, D.E. 20-7).

10. Attached as Exhibit 10 is a true copy of the Norfolk Southern Waybill regarding the OOOX shipment (previously authenticated by Defendants, Gambone Declaration, D.E. 20-8).

11. Attached as Exhibit 11 is a true copy of Yang Ming bill of lading terms and conditions from their website (previously considered by the Court in plaintiff's motion for partial summary judgment in related case *Sompo Japan v. Norfolk Southern*, 07 Civ 2735, D.E. 12-9).

12. Attached as Exhibit 12 is a true specimen copy of the Nippon Express bill of lading terms and conditions (previously considered by the Court in plaintiff's motion for partial summary judgment in related case *Sompo Japan v. Norfolk Southern*, 07 Civ 2735, D.E. 12-11).

13. Attached as Exhibit 13 is a true copy of an "Intermodal Transportation Agreement" as produced by defendants (previously considered by the Court in plaintiff's motion

for partial summary judgment in related case *Sompo Japan v. Norfolk Southern*, 07 Civ 2735, D.E. 12-13).

14. Attached as Exhibit 14 is a true copy of Section 8 of NS Intermodal Rail Circulars as produced by defendants (previously considered by the Court in plaintiff's motion for partial summary judgment in related case *Sompo Japan v. Norfolk Southern*, 07 Civ 2735, D.E. 12-14).

15. Attached as Exhibit 15 is a true copy of excerpts of Kansas City Southern Railway's Rules Publication KCS9012 from the Kansas City Southern website (previously considered by the Court in plaintiff's motion for partial summary judgment in related case *Sompo Japan v. Norfolk Southern*, 07 Civ 2735, D.E. 12-19).

I declare the foregoing is true and correct under the penalty of perjury of the laws of the United States.

Dated: Rye, New York
October 16, 2009



Thomas M. Eagan

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